



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Support Services, Inc.

File: B-224307

Date: November 12, 1986

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### DIGEST

1. Protest alleging that requirements for performance and bid bonds in a solicitation for fire protection services unduly restrict competition is without merit. Procurement regulations authorize requiring performance bond in a non-construction situation where, as here, the services are essential and the contractor will have the use of government-owned property, and a bid bond requirement is valid where a performance bond also is required.

2. Fact that a preaward survey will be conducted does not in itself establish that solicitation requirement for performance bond is unreasonable. Survey is an evaluation of the prospective contractor's capability to perform, and does not offer an agency any legal protection after award, whereas performance bond secures the contractor's obligation to perform.

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### DECISION

Support Services, Inc. protests the bonding requirements of invitation for bids (IFB) No. 631-11-86, issued by the Veterans Administration (VA) for purposes of a cost comparison under Office of Management and Budget (OMB) Circular No. A-76. The cost comparison is to determine whether fire protection services at the VA Medical Center, Northampton, Massachusetts, can be performed at a lower cost in-house or by contract. Support Services complains that the VA's bonding requirements are only included to restrict competition and increase contractor costs, so as to ensure that the services will be retained in-house, and that a preaward survey would be enough to protect the government's interest.

We deny the protest.

The IFB requires each bidder to submit a bid bond of 20 percent of the offered price and a performance bond in an amount equal to 100 percent of the contract price.

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The VA initially argues that Support Services' challenge to the bonding requirements is not ripe for review, since the protester will have an opportunity to pursue an agency appeal if it finds the results of the A-76 cost comparison to be unfair. Support Services' protest, however, relates to an alleged impropriety in the solicitation that is apparent prior to bid opening. A protest against such an impropriety must be filed either with the VA or with our Office before bid opening. 4 C.F.R. § 21.2(a)(1) (1986).

Support Services argues that the IFB requirement for a 100-percent performance bond will restrict competition and ensure increased contractor costs. Although a bond requirement may result in a such a restriction, however, it nevertheless can be a necessary and proper means of securing to the government fulfillment of the contractor's obligations under the contract in appropriate circumstances. Renaissance Exchange, Inc., B-216049, Nov. 14, 1984, 84-2 C.P.D. ¶ 534. The regulations therefore authorize a requirement for a performance bond on a nonconstruction contract when the terms of the contract provide for the use of government property by the contractor, or where it otherwise is necessary to protect the interests of the government. Federal Acquisition Regulation (FAR), 48 C.F.R. § 28.103-2 (1985).

Both Support Services and the VA agree that this contract involves the use of an extensive amount of government-furnished property, such as fire fighting and transportation equipment (fire trucks, emergency vans and sedans), which the contractor is required to maintain. The VA further emphasizes that uninterrupted performance is necessary due to the critical nature of the fire protection services.

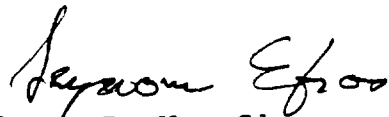
Before we will disturb a decision to require bonding on a nonconstruction contract, the protester must demonstrate that the decision is unreasonable or was made in bad faith. See K. H. Services, B-212172, Sept. 15, 1983, 83-2 C.P.D. ¶ 329. We see nothing unreasonable with the bonding requirements. The use of extensive government property by the contractor, and the essential nature of the services involved, clearly justify, under the applicable regulation, requiring a performance bond in this case. See Galaxy Custodial Services, Inc., et al., 64 Comp. Gen. 593 (1985), 85-1 C.P.D. ¶ 658.

In addition, the regulations authorize use of a bid bond where a performance bond is found necessary. See FAR, 48 C.F.R. § 28.101-1. In this respect, the function of such a bond is to protect the government from procurement costs in excess of the offered price where the successful offeror fails to execute the required contract documents and submit the required performance bond. Executive-Suite Services, Inc., B-212416, May 29, 1984, 84-1 C.P.D. ¶ 577.

Further, we do not agree with the protester that the fact that a preaward survey will be conducted makes the performance bond requirement unnecessary. A preaward survey is an evaluation of a prospective contractor's capability to perform a proposed contract; it does not offer an agency any legal protection after award is made. A performance bond, by contrast, secures the contractor's obligation to perform. See Rampart Services, Inc., B-221054.2, Feb. 14, 1986, 86-1 C.F.D. ¶ 164.

Support Services also contends that it is unfair for the government not to include the cost of bonding in its estimated cost. The VA, however, responds that comparable costs will be reflected in the agency's cost estimate to the extent required by OMB Circular No. A-76 procedures. Support Services' point therefore is moot.

The protest is denied.

*for*   
Harry R. Van Cleve  
General Counsel